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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/557,104

11/27/2006

Martin Heinen

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EXAMINER

CHARIOUI, MOHAMED

ART UNIT

PAPER NUMBER

2857

MAIL DATE

DELIVERY MODE

11/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/557,104

Applicant(s)

HEINEN ET AL.

Examiner

Mohamed Charioui

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s), _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,10 and 12 is/are rejected.
- 7) ☒ Claim(s) 3-9 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/15/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. **Fig. 1** is objected to because boxes are not labeled, The Examiner directs the applicant to 37 C.F.R. 1.84(n) and 1.84(o) which state, "Graphical drawing symbols may be used for conventional elements when appropriate" while "[o]ther symbols which are not universally recognized may be used, subject to approval by the Office" and that "[s]uitable descriptive legends may be used subject to approval by the Office, or may be required by the examiner where necessary for understanding of the drawing". Since the drawing in Figure 1 does not contain conventional elements, the Examiner may require descriptive legends for better understanding of the drawings. See MPEP 608.02.

Claim Objections

2. **Claim 2** is objected to because of the following informalities:

In claim 2, lines 1-2, change "according to claim 1 or any of the above claims" to -according to claim 1--. Appropriate correction is required.

Claims 3-9, 11 and 12 are objected to under 37 CFR 1.75(c) as being in improper form because The Examiner cannot determine the chain of dependency. Therefore, the scope of the claims is unclear. Accordingly, the claims 3-9, 11 and 12 are not been further treated on the merits.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 10 and 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 10 and 12 recite "preferably". It is not clear whether the limitations following "preferably" are all that is comprised or if non recited limitations are also included.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 12 are rejected under 35 USC § 101 because they are directed to non-statutory subject matter.

The descriptions or expressions of the programs/software are not physical "things." They are neither computer components nor statutory processes, as they are not "acts." Being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program/software and other claimed elements of a computer, which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is

thus statutory. Accordingly, it is important to distinguish claims that define descriptive material per se from claims that define statutory inventions.

In order to overcome this rejection, the following language is suggested:

"12. (Currently amended) A computer readable medium encoded with a software for ..."

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Momtaz et al. (U.S. Patent Number 7,263,151).

As per claim 1, Momtaz et al. teach a level comparator adapted for comparing a level of a comparator input signal and correspondingly providing a comparator output signal (see col. 2, lines 10-42), a sampling unit coupled to the level comparator and being adapted for sampling the comparator output signal (see col. 8, lines 50-56), and a bit error test unit adapted to receive the sampled comparator output signal and to determine therefrom an indication of a bit error in a sequence of the sampled comparator output signal (see col. 2, lines 10-25 and col. 3, lines 1-12).

As per claim 2, Momtaz et al. further teach a phase shifting unit being adapted to receive and phase-shift a clock signal and to provide to the sampling unit a phase-shifted clock signal for controlling a sampling point of the sampling unit (see col. 2, lines 35-53 and col. 8, lines 50-56).

As per claim 10, Momtaz et al. further teach comparing a level of a comparator input signal and correspondingly providing a comparator output signal (see col. 2, lines 10-22; col. 4, lines 18-23; and col. 7, lines 31-39), sampling the comparator output signal (see col. 8, lines 50-56), determining from the sampled comparator output signal an indication of a bit error in a sequence of the sampled comparator output signal (see col. 3, lines 1-16).

Prior art

6. The prior art made record and not relied upon is considered pertinent to applicant's disclosure:

Crouse ['974] discloses optimized digital delta modulation compander having truncation effect error recovery.

Contact information

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohamed Charioui whose telephone number is (571) 272-2213. The examiner can normally be reached Monday through Friday, from 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on (571) 272-7925. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mohamed Charioui

11/11/07


ELISEO RAMOS-FELICIANO
SUPERVISORY PATENT EXAMINER